of them to their mother; and, inasmuch as, it has been several years since Mr. Bass took them into his household, the court holds that the ties of companionship have likely become stronger than the ties of blood, and the mother is estopped to deny the effect of her deed. The court is upheld in this in *Maples* v. *Maples,* 49 Miss. 393 (1873). The contrary was held in *State* v. *Clover,* 16 N. J. L. (1 Har.) 419, where the court ordered the child delivered to the mother, where on habeas corpus the return of the defendant showed that the child was intrusted to them with the consent of the mother, to live and remain with them until full age, and the child wished to remain. And again, in *Hoxsie* v. *Potter,* 16 R. I. 374 (1888), the mother was refused the return of the child upon bringing the writ, but here she had given an infant of three months to deceased husband's aunt, and it remained with her nine years, and the mother visited it once and asked that it be allowed to visit her. A little stronger than this is the principal case, in which there is no tie of blood. Also it would seem that the laws of Georgia were not strictly complied with. It was held in *Commonwealth* v. *Atkinson,* 8 Phila. 375, that where indenture of apprenticeship is defective, habeas corpus is the proper method. And the cases seem to hold that the desires or preferences of the child will be consulted when it has reached an age of discretion. *Woodruff* v. *Conley,* 50 Ala. 304 (1874); *Commonwealth* v. *Hammond,* 27 Mass. (10 Pick.) 274 (1830); *Merrit* v. *Swinley,* 82 Va. 433 (1886). It would seem, then, that the principal case is in line with the weight of authority, but see *Queen* v. *Clarke, In re Alicia Race,* C. of Q. B., 7. ELLIS & BLACKBURN, 185, 1857, for a resume of law and argument on both sides of the question.

HOMESTEAD—CONVEYANCES—JOINDER OF HUSBAND AND WIFE.—In 1879, Jacob Lott owned and lived upon one hundred and forty acres of land. The house and buildings were upon the north seventy acres of this one hundred and forty. At that time he made an oral arrangement with his two sons by which he gave (as far as he could) moieties of his farm and put them in possession thereof. His wife executed and delivered to them quit claim deeds as part of the transaction. Lott deeded to his sons their respective parcels in 1900 and died in 1901. Ejectment was brought by the defendant to recover a portion of the north seventy acres upon the claim that part of this land had been the homestead and that there was not a sufficient conveyance. This was a bill to quiet title. *Held,* that these deeds and oral transactions passed no title to the homestead. *Lott et al.* v. *Lott et al.* (1906), — Mich. —, 109 N. W. Rep. 1126.

The Constitution of Michigan, Article 16, § 2, provides that "alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same." Six of the eight judges were of the opinion that in order to be a valid conveyance there must be a strict compliance with the provisions of the Constitution; that in this case as there was at the most but a written consent by the wife to an oral agreement by the husband, it did not meet the requirements of the Constitution and that these two void attempts at conveyance would not make a valid land contract enforceable in equity against both and thereby avoid the force of the consti-

tutional provision; that a wife cannot convey by her separate instrument the land which is the homestead, or any part thereof, or interest therein, to any third person, and that her separate contract to convey the land in the future would have no more validity. The other two judges were inclined toward a less strict and technical rule and were in favor of construing these acts as a land contract enforceable in equity. Although this may be the more equitable view, it will be seen upon examination of the cases upon the joinder of the wife in the conveyance of the husband that the great majority of the courts require a very strict compliance with the provisions of the statutes and constitutions. *Lies* v. *Diablar,* 12 Cal. 328; *Kitterlin* v. *Milwaukee Mechanics Mut. Ins. Co.,* 134 Ill. 647; *Eldredge* v. *Pierce,* 90 Ill. 474. Deeds were separate and both were held void in *Poole* v. *Gerrard,* 6 Cal. 72. Husband and wife must join in the same joint instrument, *Pryne* v. *Pryne* (1902), 116 Iowa 82, 89 N. W. 108; *Loomis* v. *Loomis* (1905), — Cal. —, 82 Pac. 679. Instrument void for non-joinder cannot thereafter be ratified by the wife, *Alvis* v. *Alvis* (1904), 123 Iowa 546; *Howell* v. *McCrie,* 36 Kas. 636; *Ott* v. *Sprague,* 27 Kas. 620; *Christian* v. *Clark,* 78 Tenn. 630. Wife cannot release her homestead estate by her separate deed, *Dickinson* v. *McLane,* 57 N. H. 31. Wife failed to sign first mortgage but signed the second. *Held,* that she could not by waiving exemption give first mortgage priority over second, *Mattingly's Adm'r* v. *Hazel* (1904), 25 Ky. L. R. 1483, 78 S. W. 178. For conveyance by husband after abandonment by wife, see 5 MICH. LAW REV. 286.

HOMICIDE—PENAL STATUTES—CONSTRUCTION.—One Conrad and one John Doe broke and entered a dwelling house in the night time, and while engaged in the perpetration of a burglary an alarm was given and the house was surrounded by policemen. The burglars attempted to escape and when about thirty feet from the house, and on another lot, one of them shot and killed a policeman who had attempted to arrest them. Conrad was indicted under a statute which reads as follows: "Whoever purposely, and either by deliberate and premeditated malice, or by means of poison, or in perpetrating, or attempting to perpetrate, any rape, arson, robbery, or burglary, kills another, is guilty of murder in the first degree and shall be punished by death." *Held,* the killing was in perpetration of the burglary, and that it was murder in the first degree. Also that it was immaterial which one committed the act, for it being in furtherance of a common design, though the killing was not a part of the prearranged plan, both burglars are equally guilty of the homicide. *Conrad, alias Castor* v. *State* (1906), — Ohio —, 78 N. E. Rep. 957.

The decision in this case must be based upon the answer to the question, whether the killing under such circumstances was, either in law or in fact, in aid or furtherance of an attempt or purpose on the part of Conrad to commit a burglary. In other words, was the killing of the policeman a part of the res gestae of the burglary. The majority opinion holds that the act of killing was a part of the res gestae and, therefore, that Conrad was guilty of murder in the first degree. The rule of strict construction of penal statutes does not require us to go so far as to defeat the purpose of the statute by a technical application of the rule. *United States* v. *Hartwell,* 73 U. S. 385, 395, 396, 18